

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 88 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? sd/-

2. To be referred to the Reporter or not? sd/-

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3. Whether Their Lordships wish to see the fair copy
of the judgement? sd/-

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? sd/-

5. Whether it is to be circulated to the Civil Judge?
sd/-

STATE OF GUJARAT

Versus

DHANABHAI ANANDBHAI MAKWANA

Appearance:

1. Second Appeal No. 88 of 1989
GOVERNMENT PLEADER for Petitioners
MR JJ YAJNIK for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 13/07/98

ORAL JUDGEMENT

This is defendant's Second Appeal.

2. The brief facts are that the respondent filed
Suit for declaration that the order terminating him from
service is illegal, null and void inasmuch as it was
passed without issuing any show cause notice to him nor
any opportunity of hearing was given to him. Plaintiff
respondent was selected in April 1982 as Police Constable

by Superintendent of Police, Rajkot (Rural). He was given appointment. He was sent to Police Training School, Vadodara. He was receiving training. However, it is alleged that due to some disgruntled person the services of the respondent were terminated without any show cause notice and without obtaining explanation from the respondent. The order of termination is said to be arbitrary, unreasonable, illegal and ultra-vires and also in violation of principles of natural justice. Representations were made against the impugned order. Representation was ultimately rejected. Thereafter a Suit for declaration and injunction was filed.

3. The Suit was resisted on the ground that it was time barred and that the impugned order was order of termination simplicitor and was not passed as a measure of punishment. Hence no opportunity of hearing was required to be given. He was appointed on temporary basis on a probation of two years as Un-armed Police Constable. At the time of recruitment the respondent was to file character Certificate stating therein if any criminal prosecution is pending against him or not. The plaintiff filed such declaration certificate and stated in Column No.10 that no such prosecution was pending against him. However, it was found that the respondent was involved in an offence punishable under Section 323, 324, 504 of Indian Penal Code in Wankaner Taluka Police Station CR No.I 47/80. Since the plaintiff respondent made suppression of material fact while obtaining employment it was itself a misconduct of serious nature and hence his services were terminated and the order of termination is not hit by any provision of the Constitution of India. It is however admitted that the representation of the respondent against the termination order was also rejected.

4. The trial Court decreed the suit holding that it was not barred by limitation and the order of termination casts stigma and was not an order simplicitor and since no inquiry was conducted nor opportunity of hearing was given nor any show cause notice was served on the plaintiff - respondent, the order of termination was illegal. An Appeal was preferred which was also dismissed. It is, therefore, this Second Appeal.

5. In this Appeal three substantial questions of law were formulated as enumerated hereunder :

I. Whether the mis-statement by the respondent as regards the case pending against him at the time of his employment would vitiate the contract of

employment ?

II. Whether the case is governed by Article 311(2) of the Constitution of India ?

III. Whether the Suit is barred by Limitation Act ?

6. The learned Counsel for the parties were heard and the record has been examined. So far as question No.2 is concerned it suffers from vagueness. It should have been whether the case is governed by Article 311(2) of the Constitution of India. It is not understood how this substantial question arose when the Government Pleader in the High Court formulated only two substantial questions along with the Memo of Appeal and in these questions he did not challenge the applicability of Article 311(2) of the Constitution of India. The learned A. G. P., who argued this Appeal, was unable to show how the suit is barred by Article 311(2) of the Constitution of India. The second question is, therefore, answered in negative inasmuch as the order of termination is subject to the provision of Article 311(2) of the Constitution of India.

7. So far as third question is concerned it is whether the Suit is barred by Article 58 of the Limitation Act. It was essentially a Suit for declaration. Article 58 provides that in a suit to obtain any other declaration the period of limitation will be three years from the date when the right to sue first accrues. The suit was filed on 3.2.1986. The order of termination was passed on 28.6.1982 (Exh.16). Against this order representations were made and one representation was rejected on 30.8.1983 (Exh.21). Since repeated representations were made by the respondent to the concerned Authorities he was under the impression that those representations may be considered to be departmental Appeals or departmental representation. Since the representation was rejected on 30.8.1983 vide Exh.21 the right to sue accrued to the respondent on this date, viz. 30.8.1983 and not on 28.6.1982. The period of three years from 30.8.1983 could not have expired on 3.2.1986 when the Suit was filed. Thus, the suit was within limitation in view of Article 58 of the Limitation Act and the third substantial question is also answered in negative.

8. So far as the first substantial question is concerned it is not in dispute that correct declaration in column No.10 of the character Certificate which is also locally called as Bond was not given. There was

material concealment of fact. The impression was given that no prosecution was pending against the respondent whereas the fact was that the prosecution under Section 323, 324, 504 of the Indian Penal Code of Wankaner vide CR No. 47/80 was pending against the respondent. In the written statement itself the State of Gujarat considered this concealment as misconduct of serious nature. The order of termination as contained in Exh.16 also shows that it was not a termination simplicitor, but the appointment Authority was influenced by pendency of a criminal prosecution vide CR No.47/80 against the respondent. This was considered to be active concealment and misrepresentation as well as suppression of fact. Consequently it is not the case where there is any scope for finding out the real nature of the termination order. On the face of it the termination order is not an order simplicitor, but it is in the nature of stigma and it speaks that because of serious misconduct, viz. material concealment of pendency of criminal prosecution against the respondent that he was terminated from service. If this was so then show cause notice was essentially required to be served upon the respondent and opportunity of hearing should have been given to the respondent before passing the impugned order. There is no force in the contention of the learned Counsel for the appellant that the impugned order is order simplicitor and is not an order punitive in nature nor it casts any stigma upon the respondent. The two Courts below were, therefore, correct in giving finding that the impugned order is violative of Article 311(2) of the Constitution of India. If this was so then the declaration was rightly granted by the two Courts below that mere mis-statement without affording opportunity of hearing to the respondent would not vitiate the contract of employment. The first question is also answered accordingly.

9. In view of foregoing discussions orders of the two Courts below do not suffer from any illegality. There is thus no merit in this Appeal which is hereby dismissed. No order as to costs.

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